

Case: 25CH1:15-cv-000466 Document #: 2 Filed: 04/06/2015 Page 1 of 6

IN THE CHANCERY COURT OF HINDS COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT

GANNETT RIVER STATES PUBLISHING CORPORATION
D/B/A THE CLARION-LEDGER

EDDIE JEAN CARR, CHANCERY CLERK

Abraham D.C.
COMPLAINANT

VS.

CAUSE NO. G2015-466 W/4

MISSISSIPPI DEPARTMENT OF MENTAL HEALTH

RESPONDENT

COMPLAINT TO COMPEL PUBLIC ACCESS TO RECORDS

Complainant Gannett River States Publishing Corporation d/b/a The Clarion-Ledger (the "Clarion Ledger"), pursuant to Miss. Code Ann. § 25-61-13, hereby files this Complaint to Compel Public Access to Records against Respondent Mississippi Department of Mental Health (the "Department of Mental Health"), and in support thereof, would state as follows:

PARTIES

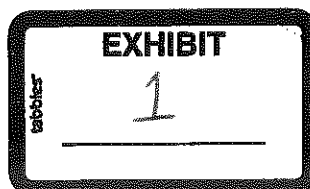
1. The Clarion Ledger is a corporation organized and existing under the laws of Arkansas, with its principal place of business in McLean, Virginia, and is qualified to do business in Mississippi.

2. The Department of Mental Health is a Mississippi state entity that may be served with process through the Office of the Attorney General of the State of Mississippi at his offices at the Walter Sillers Building at 550 High Street, Suite 1200, Jackson, Mississippi.

JURISDICTION AND VENUE

3. The Court has jurisdiction over this matter pursuant to Article VI, Section 156 of the Mississippi Constitution and Miss. Code Ann. § 25-61-13.

4. Venue is proper in this Court pursuant to Miss. Code Ann. § 25-61-13 because this Court is the "chancery court of the county in which the public body is located."



FACTS

5. On December 22 2011, the United States Department of Justice (“DOJ”) sent a letter (“Findings Letter”) to the State of Mississippi regarding the DOJ’s findings resulting from its investigation of the State’s services for and support of persons with mental illness and/or developmental disabilities (“DD”). See DOJ Findings Letter, attached as Exhibit A. As explained in the Findings Letter, the DOJ found that the State had violated the Americans with Disabilities Act, 42 U.S.C. §§ 12131-12134, and its implementing regulations, 28 C.F.R. pt. 35, “by unnecessarily institutionalizing persons with mental illness or DD in public and private facilities and failing to ensure that they are offered a meaningful opportunity to live in integrated community settings consistent with their needs.” *Id.*

6. The State, through Attorney General Jim Hood, agreed with the DOJ that it would provide expanded services for adults with mental illness and people with developmental and intellectual disabilities and engage national experts to provide technical assistance regarding implementation of the expanded services. See August 29, 2014 Letter from Attorney General Jim Hood, attached as Exhibit B.

7. In May 2014, the State contracted with Technical Assistance Collaborative (“TAC”) to (1) assess and make recommendations for a statewide housing strategy to assist with locating and funding integrated supported housing options for individuals with mental illness and people with developmental and intellectual disabilities, and (2) evaluate the State’s current services and programs and provide recommendations and technical assistance where needed. See *id.* (“We have retained TAC to study permanent housing (study to be completed in August), and we are about to retain TAC to review *Troupe* issues”).¹

¹ “*Troupe*” as it is used in the AG’s August 2014 letter refers to *Troupe, et al v. Barbour, et al*, In the United States District Court for the Southern District of Mississippi, Civil Action No.: 3:10-cv-00153-HTW-MTP, wherein

8. TAC performed both assessments. TAC's report on integrated supportive housing was completed in October 2014 and published to the Department of Health's website. See <http://www.dmh.ms.gov/wp-content/uploads/2014/10/A-Statewide-Approach-for-Integrated-Supportive-Housing-in-Mississippi3.pdf>.

9. TAC's report (the "TAC Report") on the State's current services and programs, i.e., the *Troupe* issues, was completed in March 2015. However, the Department of Health has withheld it from publication.

10. Upon information and belief, the TAC Report was paid for with taxpayer money. Furthermore, upon information and belief, it was understood by the organizations and families who participated in the assessment for the TAC Report that the Department of Mental Health would make the TAC Report public. Again, the Department of Health has withheld it from publication.

11. On March 23, 2015, the Clarion Ledger submitted a public records request through its reporter Emily Le Coz, pursuant to Miss. Code Ann. § 25-61-5 to the Department of Mental Health requesting access to and a copy of the TAC Report. See Public Records Request, attached as Exhibit C.

12. In a March 26, 2015 letter, the Department of Mental Health refused to provide the Clarion Ledger access to the TAC Report, alleging that the TAC Report included "confidential mediation documents." See Response Letter, attached as Exhibit D.

13. However, the "exemptions" and/or "privileges" asserted by the Department of Mental Health are inapplicable, and the Department of Mental Health's refusal to provide access

plaintiffs have alleged that the State has failed to meet the needs of children with behavioral or emotional disorders and has discriminated against children with mental health issues.

to the TAC Report on the basis of these alleged “exemptions” and/or “privileges” is in direct contradiction to its publication of TAC’s first report.

14. Furthermore, as of the date of the filing of this Complaint, the DOJ has not filed a lawsuit against the State or the Department of Health related to its December 2011 Findings Letter, and a protective or confidentiality order covering the TAC Report has not been entered in the *Troupe* case. See Docket Report, attached as Exhibit E.

15. Accordingly, the Clarion Ledger now files this Complaint to Compel Public Access to Records pursuant to Miss. Code Ann. § 25-61-13, seeking a determination that the documents requested in its March 23, 2015 request were wrongfully withheld by the Department of Mental Health and should be produced, along with damages and expenses for the County’s willful and knowing denial of such documents.

COUNT I – VIOLATION OF MISS. CODE ANN. § 25-61-5

16. The allegations of paragraphs 1-15 are incorporated by reference.

17. The Department of Mental Health wrongfully, willfully, knowingly and without justification withheld records requested by the Clarion Ledger in its March 23, 2015 request, in violation of Miss. Code Ann. § 25-61-5.

COUNT II – PENALTY

18. The allegations of paragraph 1-17 are incorporated by reference.

19. The Department of Mental Health wrongfully, willfully, knowingly and without justification withheld records requested by the Clarion Ledger in its March 23, 2015 request, in violation of Miss. Code Ann. § 25-61-5.

20. Pursuant to Miss. Code Ann. § 25-61-15, the Department of Mental Health is liable in the amount of \$100.00, plus reasonable expenses, costs and attorneys' fees incurred by the Clarion Ledger in bringing this proceeding.

WHEREFORE, based on the foregoing, the Clarion Ledger respectfully requests that the Court grant the following relief:

- 1) Set this matter for hearing at the earliest practicable date, and expedite this matter in every possible way.
- 2) Enter a judgment declaring that the Department of Mental Health wrongfully, willfully, knowingly and without justification withheld records requested by the Clarion Ledger in its March 23, 2015 request, in violation Miss. Code Ann. § 25-61-5 and ordering the Department of Mental Health to produce the TAC Report;
- 3) Enter a judgment finding the Department of Mental Health liable pursuant to Miss. Code Ann. § 25-61-15 in the amount of \$100.00, plus reasonable expenses, costs, and attorneys' fees incurred by the Clarion Ledger in bringing this proceeding, plus prejudgment interest; and
- 4) All further relief as the Court may deem appropriate.

Dated: April 6, 2015.

Respectfully submitted,

**GANNETT RIVER STATES PUBLISHING
CORPORATION D/B/A THE CLARION-LEDGER**

By 

One of Its Attorneys

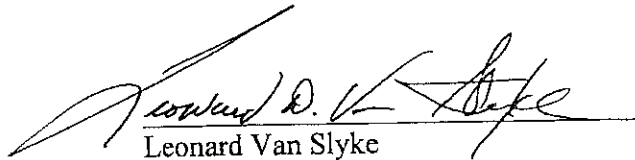
OF COUNSEL:

Leonard Van Slyke, MSB # 6589
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The Pinnacle Building, Suite 100
190 East Capitol Street
Post Office Drawer 119
Jackson, Mississippi 39205
Telephone: 601-948.3101
Facsimile: (601) 960-6902
lvanslyke@brunini.com

CERTIFICATE OF SERVICE

Pursuant to Miss. Code Ann. § 25-61-13, I hereby certify that I served a true and correct copy of the foregoing upon the Mississippi Ethics Commission by hand delivery to 660 North Street, Suite 100-C, Jackson, Mississippi 39202, and by U.S. Mail to P.O. Box 22746, Jackson, Mississippi 39225-2746.

Dated: April 6, 2015.


Leonard Van Slyke

Case: 25CH1:15-cv-000466 Document #: 2-1 Filed: 04/06/2015 Page 1 of 1

COVER SHEET Civil Case Filing Form (To be completed by Attorney/Party Prior to Filing of Pleading)		Court Identification Docket Number <div style="border: 1px solid black; padding: 2px; display: inline-block;">251 CH</div> County # Judicial Court ID District (CH, CI, CO)		Case Year <div style="border: 1px solid black; padding: 2px; display: inline-block;">2015</div>	Docket Number <div style="border: 1px solid black; padding: 2px; display: inline-block;">00406</div> <div style="border: 1px solid black; padding: 2px; display: inline-block;">CV</div> Local Docket ID			
Mississippi Supreme Court Administrative Office of Courts		Form AOC01 (Revised 1/1/2001)		This area to be completed by clerk				
<p style="text-align: center;">IN THE CHANCERY COURT OF HINDS COUNTY</p> <p>Short Style of Case: <u>Gannett River States Publishing Corp. d/b/a the Clarion-Ledger v. Mississippi Department of Mental Health</u></p> <p>Party Filing Initial Pleading: Type/Print Name <u>Leonard Van Slyke</u></p> <p>Check (✓) if Not an Attorney <input type="checkbox"/> Check (✓) if Pro Hac Vice <input checked="" type="checkbox"/> Signature <u>Leonard Van Slyke</u> MS Bar No. <u>6589</u></p> <p>Compensatory Damages Sought: \$ <u> </u> Punitive Damages Sought: \$ <u> </u></p> <p>Is Child Support contemplated as an issue in this suit? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If "yes" is checked, please submit a completed Child Support Information Sheet with Final Decree/Judgment</p> <p>PLAINTIFF - PARTY(IES) INITIALLY BRINGING SUIT SHOULD BE ENTERED FIRST (FIRST NAME IN SHORT STYLE) - ENTER ADDITIONAL PLAINTIFFS ON SEPARATE FORM</p> <p>Individual <u> </u> Last Name <u> </u> First Name <u> </u> Maiden Name, if Applicable <u> </u> Middle Init. <u> </u> Jr/Sr/III/IV <u> </u></p> <p>Address of Plaintiff <u> </u></p> <p>Check (✓) if Individual Plaintiff is acting in capacity as Executor(trix) or Administrator(trix) of an Estate, and enter style: <u> </u></p> <p>Check (✓) if Individual Plaintiff is acting in capacity as Business Owner/Operator (d/b/a) or State Agency, and enter entity: <u> </u></p> <p>D/B/A / Agency <u> </u></p> <p>Business <u>Gannett River States Publishing Corporation</u></p> <p>Enter legal name of business, corporation, partnership, agency - If Corporation, indicate state where incorporated</p> <p>✓ Check (✓) if Business Plaintiff is filing suit in the name of an entity other than the above, and enter below: <u> </u></p> <p>D/B/A: <u>The Clarion Ledger</u></p> <p>DEFENDANT - NAME OF DEFENDANT (FIRST NAME IN SHORT STYLE) - ENTER ADDITIONAL DEFENDANTS ON SEPARATE FORM</p> <p>Individual <u> </u> Last Name <u> </u> First Name <u> </u> Maiden Name, if Applicable <u> </u> Middle Init. <u> </u> Jr/Sr/III/IV <u> </u></p> <p>Check (✓) if Individual Defendant is acting in capacity as Executor(trix) or Administrator(trix) of an Estate, and enter style: <u> </u></p> <p>Check (✓) if Individual Defendant is acting in capacity as Business Owner/Operator (d/b/a) or State Agency, and enter entity: <u> </u></p> <p>D/B/A / Agency <u> </u></p> <p>Business <u>Mississippi Department of Mental Health</u></p> <p>Enter legal name of business, corporation, partnership, agency - If Corporation, indicate state where incorporated</p> <p>Check (✓) if Business Defendant is being sued in the name of an entity other than the above, and enter below: <u> </u></p> <p>D/B/A: <u> </u></p> <p>ATTORNEY FOR THIS DEFENDANT: <u> </u> Bar No. <u> </u> or Name: <u> </u> Pro Hac Vice (✓) <input checked="" type="checkbox"/></p> <p>(If known)</p>								
<p>In left hand column, check one (1) box that best describes the nature of this suit. In right hand column check all boxes which indicate secondary claims.</p> <table border="0" style="width: 100%;"> <tr> <td style="vertical-align: top; width: 33%;"> <p>Business/Commercial</p> <p><input type="checkbox"/> Accounting (Business)</p> <p><input type="checkbox"/> Bankruptcy</p> <p><input type="checkbox"/> Business Dissolution - Corporation</p> <p><input type="checkbox"/> Business Dissolution - Partnership</p> <p><input type="checkbox"/> Debt Collection</p> <p><input type="checkbox"/> Employment</p> <p><input type="checkbox"/> Examination of Debtor</p> <p><input type="checkbox"/> Execution</p> <p><input type="checkbox"/> Foreign Judgment</p> <p><input type="checkbox"/> Garnishment</p> <p><input type="checkbox"/> Pension</p> <p><input type="checkbox"/> Receivership</p> <p><input type="checkbox"/> Replevin</p> <p><input type="checkbox"/> Stockholder Suit</p> <p><input type="checkbox"/> Other <u> </u></p> <p>Domestic Relations</p> <p><input type="checkbox"/> Child Custody/Visitation</p> <p><input type="checkbox"/> Child Support</p> <p><input type="checkbox"/> Contempt</p> <p><input type="checkbox"/> Divorce: Fault</p> <p><input type="checkbox"/> Divorce: Irreconcilable Differences</p> <p><input type="checkbox"/> Domestic Abuse</p> <p><input type="checkbox"/> Emancipation</p> <p><input type="checkbox"/> Modification</p> <p><input type="checkbox"/> Paternity</p> <p><input type="checkbox"/> Property Division</p> <p><input type="checkbox"/> Separate Maintenance</p> <p><input type="checkbox"/> Termination of Parental Rights</p> <p><input type="checkbox"/> UIFSA (formerly URESA)</p> <p><input type="checkbox"/> Other <u> </u></p> <p>Contract</p> <p><input type="checkbox"/> Breach of Contract</p> <p><input type="checkbox"/> Installment Contract</p> <p><input type="checkbox"/> Insurance</p> <p><input type="checkbox"/> Product Liability under Contract</p> <p><input type="checkbox"/> Specific Performance</p> <p><input type="checkbox"/> Other <u> </u></p> </td> <td style="vertical-align: top; width: 33%;"> <p>Probate</p> <p><input type="checkbox"/> Accounting (Probate)</p> <p><input type="checkbox"/> Birth Certificate Correction</p> <p><input type="checkbox"/> Commitment</p> <p><input type="checkbox"/> Conservatorship</p> <p><input type="checkbox"/> Guardianship</p> <p><input type="checkbox"/> Heirship</p> <p><input type="checkbox"/> Intestate Estate</p> <p><input type="checkbox"/> Minor's Settlement</p> <p><input type="checkbox"/> Muniment of Title</p> <p><input type="checkbox"/> Name Change</p> <p><input type="checkbox"/> Power of Attorney</p> <p><input type="checkbox"/> Testate Estate</p> <p><input type="checkbox"/> Will Contest</p> <p><input type="checkbox"/> Other <u> </u></p> <p>Statutes/Rules</p> <p><input type="checkbox"/> Bond Validation</p> <p><input type="checkbox"/> Civil Forfeiture</p> <p><input type="checkbox"/> Declaratory Judgment</p> <p><input type="checkbox"/> ERISA</p> <p><input type="checkbox"/> Eminent Domain</p> <p><input type="checkbox"/> Extraordinary Writ</p> <p><input type="checkbox"/> Federal Statutes</p> <p><input type="checkbox"/> Injunction or Restraining Order</p> <p><input type="checkbox"/> Municipal Annexation</p> <p><input type="checkbox"/> Rackeering (RICO)</p> <p><input type="checkbox"/> Railroad</p> <p><input type="checkbox"/> Seaman</p> <p><input checked="" type="checkbox"/> Other <u>Mississippi Public Records Act</u></p> <p>Appeals</p> <p><input type="checkbox"/> Administrative Agency</p> <p><input type="checkbox"/> County Court</p> <p><input type="checkbox"/> Hardship Petition (Driver License)</p> <p><input type="checkbox"/> Justice Court</p> <p><input type="checkbox"/> MS Employment Security Comm'n</p> <p><input type="checkbox"/> Municipal Court</p> <p><input type="checkbox"/> Oil & Gas Board</p> <p><input type="checkbox"/> Workers' Compensation</p> <p><input type="checkbox"/> Other <u> </u></p> </td> <td style="vertical-align: top; width: 33%;"> <p>Children and Minors - 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Non-Domestic</p> <p><input type="checkbox"/> Adoption - Noncontested</p> <p><input type="checkbox"/> Consent to Abortion for Minor</p> <p><input type="checkbox"/> Removal of Minority</p> <p><input type="checkbox"/> Other <u> </u></p> <p>Torts - Personal Injury</p> <p><input type="checkbox"/> Bad Faith</p> <p><input type="checkbox"/> Fraud</p> <p><input type="checkbox"/> Loss of Consortium</p> <p><input type="checkbox"/> Malpractice - Legal</p> <p><input type="checkbox"/> Malpractice - Medical</p> <p><input type="checkbox"/> Negligence - General</p> <p><input type="checkbox"/> Negligence - Motor Vehicle</p> <p><input type="checkbox"/> Products Liability</p> <p><input type="checkbox"/> Wrongful Death</p> <p><input type="checkbox"/> Other <u> </u></p> <p>Mass Tort</p> <p><input type="checkbox"/> Asbestos</p> <p><input type="checkbox"/> Chemical Spill</p> <p><input type="checkbox"/> Dioxin</p> <p><input type="checkbox"/> Hand/Arm Vibration</p> <p><input type="checkbox"/> Hearing Loss</p> <p><input type="checkbox"/> Radioactive Materials</p> <p><input type="checkbox"/> Other <u> </u></p> <p>Real Property</p> <p><input type="checkbox"/> Adverse Possession</p> <p><input type="checkbox"/> Ejectment</p> <p><input type="checkbox"/> Eminent Domain</p> <p><input type="checkbox"/> Judicial Foreclosure</p> <p><input type="checkbox"/> Lien Assertion</p> <p><input type="checkbox"/> Partition</p> <p><input type="checkbox"/> Receiver Appointment</p> <p><input type="checkbox"/> Tax Sale: Confirmation/Cancellation</p> <p><input type="checkbox"/> Title, Boundary &/or Easement</p> <p><input type="checkbox"/> Other <u> </u></p> <p>Civil Rights</p> <p><input type="checkbox"/> Elections</p> <p><input type="checkbox"/> Habeas Corpus</p> <p><input type="checkbox"/> Post Conviction Relief</p> <p><input type="checkbox"/> Prisoner</p> <p><input type="checkbox"/> Other <u> </u></p>
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Non-Domestic</p> <p><input type="checkbox"/> Adoption - Noncontested</p> <p><input type="checkbox"/> Consent to Abortion for Minor</p> <p><input type="checkbox"/> Removal of Minority</p> <p><input type="checkbox"/> Other <u> </u></p> <p>Torts - Personal Injury</p> <p><input type="checkbox"/> Bad Faith</p> <p><input type="checkbox"/> Fraud</p> <p><input type="checkbox"/> Loss of Consortium</p> <p><input type="checkbox"/> Malpractice - Legal</p> <p><input type="checkbox"/> Malpractice - Medical</p> <p><input type="checkbox"/> Negligence - General</p> <p><input type="checkbox"/> Negligence - Motor Vehicle</p> <p><input type="checkbox"/> Products Liability</p> <p><input type="checkbox"/> Wrongful Death</p> <p><input type="checkbox"/> Other <u> </u></p> <p>Mass Tort</p> <p><input type="checkbox"/> Asbestos</p> <p><input type="checkbox"/> Chemical Spill</p> <p><input type="checkbox"/> Dioxin</p> <p><input type="checkbox"/> Hand/Arm Vibration</p> <p><input type="checkbox"/> Hearing Loss</p> <p><input type="checkbox"/> Radioactive Materials</p> <p><input type="checkbox"/> Other <u> </u></p> <p>Real Property</p> <p><input type="checkbox"/> Adverse Possession</p> <p><input type="checkbox"/> Ejectment</p> <p><input type="checkbox"/> Eminent Domain</p> <p><input type="checkbox"/> Judicial Foreclosure</p> <p><input type="checkbox"/> Lien Assertion</p> <p><input type="checkbox"/> Partition</p> <p><input type="checkbox"/> Receiver Appointment</p> <p><input type="checkbox"/> Tax Sale: Confirmation/Cancellation</p> <p><input type="checkbox"/> Title, Boundary &/or Easement</p> <p><input type="checkbox"/> Other <u> </u></p> <p>Civil Rights</p> <p><input type="checkbox"/> Elections</p> <p><input type="checkbox"/> Habeas Corpus</p> <p><input type="checkbox"/> Post Conviction Relief</p> <p><input type="checkbox"/> Prisoner</p> <p><input type="checkbox"/> Other <u> </u></p>						